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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/818,616	03/28/2001	Katherine G. August	August 34-54	1720
33498 7590 04/17/2008 CAPITOL PATENT & TRADEMARK LAW FIRM, PLLC P.O. BOX 1995 VIENNA, VA 22183				
			EXAMINER THEIN, MARIA TERESA T	
			ART UNIT 3627	PAPER NUMBER
			MAIL DATE 04/17/2008	DELIVERY MODE PAPER

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/818,616  
Filing Date: March 28, 2001  
Appellant(s): AUGUST ET AL.

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John E. Curtin  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed January 24, 2008 appealing from the Office action mailed August 23, 2007.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct. Examiner notes that the Amendment filed on November 27, 2007 was inadvertently not entered. However, for purpose of appeal, the amendment should have been entered. The Examiner was notified of entry of the after-final amendment in a separate communication mailed 4/10/2008.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

6,587,835	TREYZ ET AL.	7-2003
2002/0059111	DING ET AL.	5-2002
5,991,739	CUPPS ET AL.	11-1999
5,979,757	TRACY ET AL.	11-1999

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1, 6, 8-9, 11-13, 41, 42, 46-54, and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,587,835 to Treyz et al. in view of U.S. Patent Application Publication No. 2002/0059111 to Ding et al. and in further view of U.S. Patent No. 5,991,739 to Cupps et al.**

Regarding claim 1, Treyz discloses a wireless apparatus for processing customer orders comprising: a communication transceiver for broadcasting a wireless signal to establish a wireless communication link with a mobile customer within a predetermined distance of a vendor facility (Figure 107; col. 2, lines 32-37; col. 13, lines 22-47; col. 21, lines 53-60; col. 21, lines 64-col. 22, line 5; col. 24, lines 27-29), said predetermined distance being such as to assure that a customer's order is fulfilled before the customer arrives at the facility (col. 3, lines 36-48; Figure 115; col. 38, lines 38-60); a control circuit coupled to said transceiver for controlling said transceiver to establish the communication link with the mobile customer and for receiving a wireless order from said customer, the control circuit causing said received order to be processed to fulfillment (Figure 107; col. 22, lines 5-15; col. 24, lines 27-39; col. 61, lines 9-13).

However, Treyz does not explicitly disclose arrange the customer orders in a queue based on customer distances from a fulfillment station and a display device to indicate the status and queue of orders with said transceiver. Treyz does disclose wireless communication paths that use short-range optimization connections such as IR links and short-range RF links over distances from a fraction of a foot to hundreds of feet which is referred to as "local" communications paths or links (col. 13, lines 22-26). The local communications path can also be a Bluetooth connection between handheld

computing devices and a wireless transmitter/receiver associated with a store, merchant, mall or other establishments (col. 13, lines 28-31). The wireless communications paths could also be over longer distances, which are referred to as "remote" communications paths or links. The remote communications paths include cellular telephone links to terrestrial cellular base stations, satellite links, links to FM data services that are distributed from terrestrial broadcast stations, etc. (col. 13, lines 39-47). Furthermore, Treyz discloses the determination of the location of the user by using a GPS receiver, which is associated with the handheld device, or by using network-based techniques such as triangulation and time-of-flight measurements when the user is in communication with a wireless network (col. 2, lines 31-37).

Ding, on the other hand, teaches arrange the customer orders in a queue based on customer distances from a fulfillment station (paragraphs 25-27).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the combination to include customer orders are arranged in queue based on customer distance form a fulfillment station, as taught by Ding, in order to provide a no-wait method for placing and filling an order (Ding, paragraph 45).

Treyz and Ding do not disclose a display device to indicate the status and queue of orders with said transceiver. Ding does disclose the vendor receiving the order from the customer and the orders received by the desired vendor are then prioritized according to time or distance a customer is from the selected vendor (paragraphs 25-26).

Cupps, on the other hand, teaches the display device (col. 4, lines 13-22).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the apparatus of Treyz, to include the display device, as taught by Cupps, in order to present or show the customer orders.

Regarding claims 11-13, Treyz discloses communicates customer order information to an inventory control system (col. 33, lines 37-39); Bluetooth (col. 13, line 28-31; col. 15, lines 27-35; col. 15, lines 49-50); transmit menu items to a wireless customer (col. 21, lines 11-35; Figure 40); transmit promotional specials to a wireless customer (col. 21, lines 11-24; col. 27, lines 22-30; Figure 46); the menu items are transmitted upon the establishment of the communication link with a customer (col. 21, lines 11-35; Figure 40); the menu items are transmitted until a customer completes an order (col. 3, lines 16-25; Figure 79; col. 48, lines 13-20); the promotional specials are transmitted upon the establishment of the communication link with a customer (col. 21, lines 11-24; col. 27, lines 22-30; Figure 46); a speech recognition unit (col. 16, lines 29-30; col. 17, lines 11-15); the promotional specials are transmitted until a customer completes an order (col. 27, lines 22-30; Figure 46; col. 48, lines 13-34).

Regarding claims 6, 8-9, and 60, Treyz and Cupps substantially discloses the claimed invention, however, the combination does not explicitly disclose customer orders are arranged in a first-in-first-out queue; customer orders are arranged in queue based on time and customer priority; simultaneously display a plurality of pending customer orders; arranges the pending customer orders in the queue; and the display device to simultaneously display the locations of customers communicating with the

apparatus. The combination discloses user's location may be provided with the order or used to process the order (Treyz col. 64, lines 24-25). The order of this type may be allowed only from in-store customers in the vicinity of the store or orders from in-store customers may be given priority over other orders (col. 64, lines 25-29).

Ding, on the other hand, teaches the claimed invention, however, the combination does not explicitly disclose customer orders are arranged in a first-in-first-out queue; customer orders are arranged in queue based on time and customer priority; simultaneously display a plurality of pending customer orders; arranges the pending customer orders in the queue; and the display device to simultaneously display the locations of customers communicating with the apparatus (paragraph 10; paragraph 25; paragraph 26).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the combination to include, the claimed invention, however, the combination does not explicitly disclose customer orders are arranged in a first-in-first-out queue; customer orders are arranged in queue based on time and customer priority; simultaneously display a plurality of pending customer orders; arranges the pending customer orders in the queue; and the display device to simultaneously display the locations of customers communicating with the apparatus, as taught by Ding, in order to provide a no-wait method for placing and filling an order (Ding, paragraph 45).

Regarding claims 41-42, and 46-54, Treyz discloses control circuit determines from customer transmissions an identity of the customer; the control circuit causes the



transceiver to transmit order status information to a customer; the action includes the transmission of a message from the agent through the transceiver to a customer; the control circuit operates the transceiver to send an audio message to a customer; the control circuit operates the transceiver to send a display message to a customer; the control circuit receives a customer identification transmission from the transceiver, and operates the transceiver to transmit a customer favorites list to the customer; a customer identification transmission from the transceiver and provides the customer identification information to a customer priority database (Claim 49); the control circuit receives a customer identification transmission from the transceiver and provides the customer identification information to a customer loyalty database (Claim 50); control circuit is operative to establish a secure financial transaction link for processing a received customer transaction amount authorization; the order is an order for goods; order is an order for service; and the control circuit is a distributed processing control circuit which comprises at least two processing units, each processing an aspect of the order; control circuit is operative to cause the transmission of directions to a fulfillment station, to complete a processed order to a customer; the transmission of directions in response to a request for directions received from a customer; and the fulfillment station is a drive-through window (Figure 42; Figure 43; col. 10, lines 39-41; col. 16, lines 57-64; col. 17, lines 5-10; col. 17, lines 60-65; col. 18, lines 41-51; col. 18, lines 59-61; col. 18, line 67- col. 19, line 1; col. 19, lines 54-56; col. 21, lines 1-35; col. 21, line 64-col. 22, line 15; col. 23, lines 36-56; col. 26, lines 16-19; col. 57, line 59 – col. 58, line 12; col. 64, lines 25-26;).

**Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,587,835 to Treyz et al. and U.S. Patent Application Publication No. 2002/0059111 to Ding et al. and U.S. Patent No. 5,991,739 to Cupps et al. as applied to claim 1 above, and further in view of U.S. Patent No. 5,979,757 to Tracy et al.**

The combination of Treyz, Ding and Cupps substantially discloses the claimed invention, however, the combination does not disclose LAN IEEE 802.11 compliant communication link. The combination discloses wireless communication paths such as a local area network which may act as a local access point to a larger communication network (Treyz, col.13, line 33-37). The combination does disclose wireless communication paths that use short-range optimization connections such as IR links and short-range RF links over distances from a fraction of a foot to hundreds of feet which is referred to as "local" communications paths or links (Treyz col. 13, lines 22-26). The local communications path can also be a Bluetooth connection between handheld computing devices and a wireless transmitter/receiver associated with a store, merchant, mall or other establishments (Treyz col. 13, lines 28-31). The wireless communications paths could also be over longer distances, which are referred to as "remote" communications paths or links. The remote communications paths include cellular telephone links to terrestrial cellular base stations, satellite links, links to FM data services that are distributed from terrestrial broadcast stations, etc. (Treyz, col. 13, lines 39-47) Furthermore, the combination discloses the determination of the location

of the user by using a GPS receiver, which is associated with the handheld device, or by using network-based techniques such as triangulation and time-of-flight measurements when the user is in communication with a wireless network (Treyz col. 2, lines 31-37).

Tracy, on the other hand, teaches LAN IEEE 802.11 compliant communication link (col. 4, lines 64-67).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the combination to include, LAN IEEE 802.11 compliant communication link, as taught by Tracy, in order to communicate over a network (Tracy, col. 4, lines 64-65).

#### **(10) Response to Argument**

Appellants remark that "Each of the claims of the present invention are directed at a wireless apparatus for processing customer orders, where the apparatus receives order information when a customer is within a predetermined distance of a vendor facility broadcasting a wireless signal, said predetermined distance being such as to assure that an order is fulfilled before the customer arrives at the facility".

Examiner notes that Treyz discloses a handheld computing device communicating with merchants and other entities by forming a local wireless link. A local wireless transmitter/receiver is used to communicate with the handheld computing device. The local wireless transmitter/receiver is connected to a communications network such as an Internet. Such a local wireless transmitter/receiver serves as a

local access point to the Internet or other such communication network for the handheld computing device. (Col. 2, lines 15-23)

Such local wireless link, and local wireless transmitter/receiver used to communicate and services as an access point are considered a wireless signal.

Examiner notes that Treyz discloses an on-line which is available to in-store shoppers. As an example, the site may be accessed using a local wireless link. Because it is known that users accessing the site through this communications path are in the immediate vicinity of the store, the site provides the user with different services such as prices, shipping and service option, product offerings, etc. Users who access the site using a remote wireless communications link is identified based on location information such as GPS location information (col. 28, lines 30-43). Furthermore, Treyz discloses the handheld computing device is used to provide the user with messages when the user is in the proximity of a merchant (for example when the user walks by a merchant in the mall) (col. 38, lines 38-42); and when the user is in local wireless communications with the mall or other such entity (for example when the user is in wireless communication with a wireless transmitter/receiver located in the mall, when the user is in wireless communication with a wireless local area network associated with the mall) (col. 38, lines 48-54). The user's location is determined by determining which local wireless transmitter/receiver handheld computing device is in communication with or by using GPS techniques or other location-determination techniques (col. 38, lines 42-46). GPS or location determination techniques determine the user's location and from the user location can calculate other information such as trip distance or distance

from the destination. Treyz discloses an illustrative screen that may be provided by handheld computing device when providing a shopping assistance service in a shopping mall environment in Fig. 37 (Figure 37; col. 35, lines 21-24). The screen includes a directory option which contains store categories (Figure 37; col. 36, lines 21-26). If a user selects a store category in the directory screen, options such as map options may be displayed (col. 36, lines 37-39; col. 36, lines 43-44). The map contains information indicating the user's present location and information indicating the user's destination. Information may also be displayed that shows a recommended route between the user's location and the user's destination. Another arrangement would be text directions from the user's location to the user's destination. Information on the user's present location may be determined based on information on which local transmitter/receiver handheld computing device is communicating with using local wireless communications, may be determined based on GPS techniques. (Col. 36, lines 52-65) Treyz discloses messages which may include advertisement, specials being offered to occupants of the mall (col. 38, lines 46-47 and col. 38, lines 53-54). The messages can be notification from merchants such as pick-up of products (col. 38, lines 57-60). Moreover, Treyz discloses a handheld computing device which is used to order products and services (col. 1, lines 41-45). Treyz further discloses a handheld device used in a location-based shopping services which is used to place orders for products (col. 3, lines 31-37). The products ordered can be picked up by the user. An example is when a user places a deli order to be picked up in a store. The order is placed over a local or remote wireless link. The deli may send a notification to the user

over the local or remote wireless link when the order is ready to be picked up. This arrangement may be used in other retail environments. Orders may be placed and notifications sent at shopping malls, department stores, airports, etc. (Col. 3, lines 37-48)

Such location-based shopping services to place orders for products; user's location is determined by determining which local wireless transmitter receiver handheld computing device is in communication with or by using GPS techniques or other location-determination techniques; GPS or location determination techniques determine the user's location and from the user location can calculate other information such as trip distance or distance from the destination; an illustrative screen for providing a shopping assistance service in a shopping mall environment, wherein the screen includes a directory option which contains store categories; options such as map options may be displayed, wherein the map contains information indicating the user's present location and information indicating the user's destination, information may also be displayed that shows a recommended route between the user's location and the user's destination, information may also be text directions from the user's location to the user's destination; information on the user's present location may be determined based on information on which local transmitter/receiver handheld computing device is communicating with using local wireless communications, may be determined based on GPS techniques; placing an order to a store, wherein the order can be picked up; the store sending a notification to the user when the order is ready to be picked up are

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considered "said predetermined distance being such to assure that an order is fulfilled before the customer arrives at the facility".

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Marissa Thein

/M. T./

Examiner, Art Unit 3627

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